

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
Octavio Alejandro DUARTE-Lopez,
Defendant.

Magistrate Case No. 08MJ8095

**FINDINGS OF FACT AND
ORDER OF DETENTION.**

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on February 5, 2008, to determine whether defendant Octavio Alejandro DUARTE-Lopez, should be held in custody pending trial on the grounds that he is a flight risk. Assistant U. S. Attorney Fred Sheppard appeared on behalf of the United States. Court-appointed counsel Steven E. Feldman appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the Pretrial Services Report, and the criminal complaint issued against the Defendant on January 31, 2008, by this Court, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant required.

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I

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1)

1. The Defendant is charged in Criminal Complaint No. 08MJ8095 with the importation of 27.94 kilograms (61.46 pounds) of cocaine in violation of 21 U.S.C. § 952 and 960. Therefore, probable cause exists to believe the Defendant committed the charged offense.

2. The charged offense is an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Uniform Controlled Substances Act (21 U.S.C. § 801 et seq.). Thus, there arises a presumption that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required. See 18 U.S.C. § 3142(e).

3. The offense carries with it a minimum mandatory 10 year sentence and a maximum life sentence. See 21 U.S.C. § 960(b)(1)(B). According to the United States Sentencing Guidelines, the Base Offense level is 34. See USSG § 2D1.1(3). Assuming the Defendant's criminal history score places him in Criminal History Category I, See USSG § 4A1.1, the sentencing range for the Defendant is 151-188 months in prison.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2):

1. On January 30, 2008, defendant was the driver and sole occupant of a 1999 Isuzu Amigo as he entered the Calexico, California Wes Port of Entry. Defendant stated he was the owner of the vehicle. Customs and Border Protection Officer J. Tubbs noticed the gas tank felt solid when tapped. A subsequent inspection of the vehicle resulted in the discovery of 27.94 kilograms (61.46 pounds) of cocaine concealed within the rocker panels of the vehicle. Defendant admitted he knew controlled substances were concealed in the vehicle and he was going to be paid \$1,000.00 to transport them to the Wal-Mart in Calexico.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3):

1. The Defendant is a United States citizen.
2. The Defendant resides in Mexicali, Baja California, Mexico.
3. The Defendant's father Mexicali, Baja California, Mexico.
4. The Defendant is employed as a sprinkler installer.

1 D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4):

2 1. The government proffered no evidence to suggest that release of the Defendant
3 would pose a danger to any person or the community.

4 II

5 REASONS FOR DETENTION

6 A. There is probable cause to believe that the Defendant committed the offense charged in
7 Criminal Complaint Number 08MJ8095, to wit: the importation of 27.94 kilograms (61.46 pounds) of
8 cocaine in violation of 21 U.S.C. § 952 and 960.

9 B. The Defendant faces a substantial period of time in custody if convicted of the offense
10 charged in the Complaint. He therefore has a strong motive to flee.

11 C. The Defendant has not rebutted the presumption, based upon the Court's findings that
12 there is probable cause to believe that the Defendant committed an offense for which a maximum term
13 of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801
14 et seq.), that no condition or combination of conditions will reasonably assure the appearance of the
15 Defendant at future court proceedings.

16 III

17 ORDER

18 IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

19 IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney
20 General or his designated representative for confinement in a corrections facility separate, to the extent
21 practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The
22 Defendant shall be afforded reasonable opportunity for private consultation with counsel.

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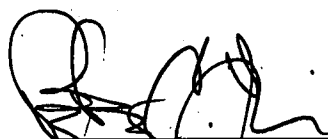
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1 While in custody, upon order of a court of the United States or upon the request of an attorney
2 for the United States, the person in charge of the correctional facility shall deliver the Defendant to the
3 United States Marshal for the purpose of an appearance in connection with a court proceeding or any
4 other appearance stipulated to by defense and government counsel.

5 THIS ORDER IS ENTERED WITHOUT PREJUDICE.

6 IT IS SO ORDERED.

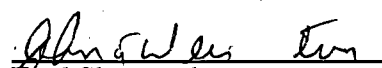
7 DATED: 2-28-08

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PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

11 Prepared by:

12 KAREN P. HEWITT
13 United States Attorney

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15 
16 Fred Sheppard
17 Assistant U. S. Attorney

18 cc: Steven E. Feldman
19 Counsel for Defendant